



Jon Kyl, Chairman

Lawrence Willcox, Staff Director  
347 Russell Senate Office Building  
Washington, DC 20510  
202-224-2946  
<http://rpc.senate.gov>

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***“His credo has always been fairness...”***

## **Fellow Judges Testify in Support of Alito Nomination**

On January 12, 2006, five sitting and two former judges from the U.S. Court of Appeals for the 3<sup>rd</sup> Circuit testified on behalf of Judge Samuel Alito’s nomination to the Supreme Court. The judges included nominees of Presidents Lyndon Johnson, Richard Nixon, Ronald Reagan, George H.W. Bush, and Bill Clinton. Collectively they have served with Judge Alito for more than 75 years, watching him work and evaluating his intellect, character, independence, and judgment. Their collective endorsement should be taken seriously by Senators considering this nomination.<sup>1</sup>

### **Judge Becker<sup>2</sup> on working with Judge Alito up close ...**

There is an aspect of appellate judging that no one gets to see — no one but the judges themselves: how they behave in conference *after* oral argument, at which point the case is decided, and which, I submit, is the most critically important phase of the appellate judicial process. In hundreds of conferences, I had never once heard Sam raise his voice, express anger or sarcasm, or even try to proselytize. Rather, he expresses his views in measured and temperate tones.

### **Judge Becker on Judge Alito’s intellect and open-mindedness ...**

Judge Alito’s intellect is of a very high order. He’s brilliant, he’s highly analytical and meticulous and careful in his comments and his written work. He’s a wonderful partner in dialogue. He will think of things that his colleagues have missed. He’s not doctrinaire, but rather is open to differing views and will often change his mind in light of the views of a colleague.

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<sup>1</sup> Quotations taken from unofficial transcripts of Judiciary Committee testimony delivered on January 12, 2006; exact page numbers not available at press time.

<sup>2</sup> Judge Edward Becker, appointed by President Ronald Reagan in 1981, is a Senior Judge on the 3<sup>rd</sup> Circuit and formerly its Chief Judge. Note: a Senior Judge continues to serve on the court and hear cases on a limited basis; he is not retired.

### **Judge Becker on whether Judge Alito is an ideologue ...**

The Sam Alito that I have sat with for 15 years is not an ideologue. He's not a movement person. He's a real judge deciding each case on the facts and the law, not on his personal views, whatever they may be. He scrupulously adheres to precedent. I have never seen him exhibit a bias against any class of litigation or litigants.... His credo has always been fairness.

### **Chief Judge Scirica<sup>3</sup> on Judge Alito's personal character ...**

Despite his extraordinary talents and accomplishments, Judge Alito is modest and unassuming. His thoughtful and inquiring mind, so evident in his opinions, is equally evident in his personal relationships. He is concerned and interested in the lives of those around him. He has an impeccable work ethic, but he takes the time to be a thoughtful friend to his colleagues. He treats everyone on our court, and everyone on our court staff, with respect, with dignity, and with compassion. He is committed to his country and to his profession. But he is equally committed to his family, his friends, and his community. He is an admirable judge and an admirable person.

### **Chief Judge Scirica on Judge Alito's openmindedness ...**

Like a good judge, he considers and deliberates before drawing a conclusion. I have never seen signs of a predetermined outcome or view, nor have I seen him express impatience with litigants or with colleagues with whom he may ultimately disagree. He is attentive and respectful of all views and is keenly aware that judicial decisions are not academic exercises but have far-reaching consequences on people's lives.

### **Judge Barry<sup>4</sup> on Judge Alito's service as U.S. Attorney ...**

The tone of a United States Attorney's Office comes from the top. The standard of excellence is set at the top. Samuel Alito set a standard of excellence that was contagious — his commitment to doing the right thing, never playing fast and loose with the record, never taking a shortcut, his emphasis on first-rate work, his fundamental decency.

### **Judge Aldisert<sup>5</sup> on Judge Alito's judicial independence ...**

Judicial independence is simply incompatible with political loyalties, and Judge Alito's judicial record on our court bears witness to this fundamental truth.

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<sup>3</sup> Judge Anthony Scirica, appointed by President Ronald Reagan in 1984, is the Chief Judge of the 3<sup>rd</sup> Circuit.

<sup>4</sup> Judge Maryanne Trump Barry has served on the 3<sup>rd</sup> Circuit since President Bill Clinton appointed her in 1999. Judge Barry also worked in the U.S. Attorney's office with Judge Alito in the late 1970s.

<sup>5</sup> Judge Ruggero Aldisert, appointed by President Lyndon Johnson in 1967, is a Senior Judge on the 3<sup>rd</sup> Circuit and formerly its Chief Judge.

### **Judge Aldisert on working with Judge Alito for 15 years ...**

We who have heard his probing questions during oral argument, we who have been privy to his wise and insightful comments in our private decisional conferences, we who have observed at first hand his impartial approach to decision-making and his thoughtful judicial temperament and know his carefully crafted opinions, we who are his colleagues are convinced that he will also be a great justice.

### **Judge Garth<sup>6</sup> on Judge Alito's lack of an agenda ...**

I can tell you with confidence that at no time during the 15 years that Judge Alito has served with me and with our colleagues on the court and the countless number of times that we have sat together in private conference after hearing oral argument, has he ever expressed anything that could be described as an agenda. Nor has he ever expressed any personal predilections about a case or an issue or a principle that would affect his decisions.

### **Judge Garth on Judge Alito's personality ...**

Sam is and always has been reserved, soft spoken and thoughtful. He is also modest, and I would even say self-effacing. And these are the characteristics I think of when I think of Sam's personality. It is rare to find humility such as his in someone of such extraordinary ability.

### **Judge Gibbons<sup>7</sup> on Judge Alito's independence from the executive ...**

The committee members should not think for a moment that I support Judge Alito's nomination because I'm a dedicated defender of [the Bush] administration. On the contrary, I and my firm have been litigating with that administration for a number of years over its treatment of detainees held at Guantanamo Bay, Cuba, and elsewhere. And we are certainly chagrined at the position that is being taken by the administration with respect to those detainees.

It seems not unlikely that one or more of the detainee cases that we are handling will be before the Supreme Court again. I do not know the views of Judge Alito respecting the issues that may be presented in those cases. I would not ask him. And if I did, he would not tell me. I'm confident, however, that, as an able legal scholar and a fair-minded justice, he will give the arguments — legal and factual — that may be presented on behalf of our clients careful and thoughtful consideration, without any predisposition in favor of the position of the executive branch.

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<sup>6</sup> Judge Leonard Garth, appointed by President Richard Nixon in 1973, is a Senior Judge on the 3<sup>rd</sup> Circuit. Judge Alito served as his law clerk in 1976-1977.

<sup>7</sup> Former Judge John Gibbons, appointed by President Richard Nixon in 1970, served on the 3<sup>rd</sup> Circuit until 1990 when he retired to become a professor of law at Seton Hall. As a federal prosecutor, Judge Alito had argued cases before Judge Gibbons, and Judge Gibbons has stated that he has followed Judge Alito's work since 1990.

### **Judge Lewis<sup>8</sup> on his own liberal politics ...**

I am openly and unapologetically pro-choice and always have been. I am openly — and it's very well known — a committed human rights and civil rights activist and am actively engaged in that process as my time permits....

I am very, very much involved in a number of endeavors that one who is familiar with Judge Alito's background and experience may wonder — “Well, why are you here today saying positive things about his prospects as a justice on the Supreme Court?”

And the reason is that having worked with him, I came to respect what I think are the most important qualities for anyone who puts on a robe, no matter what court they will serve on, but in particular, the United States Supreme Court.

### **Judge Lewis on Judge Alito's honesty and integrity ...**

As Judge Becker and others have alluded to, it is in conference, after we have heard oral argument and are not propped up by law clerks — we are alone as judges, discussing the cases — that one really gets to know, gets a sense of the thinking of our colleagues. And I cannot recall one instance during conference or during any other experience that I had with Judge Alito, but in particular during conference, when he exhibited anything remotely resembling an ideological bent.

### **Judge Lewis on Judge Alito and civil rights ...**

If I believed that Sam Alito might be hostile to civil rights as a member of the United States Supreme Court, I guarantee you that I would not be sitting here today.... My sense of civil rights matters and how courts should approach them jurisprudentially might be a little different. I believe in being a little more aggressive in these areas. But I cannot argue with a more restrained approach. As long as my argument is going to be heard and respected, I know that I have a chance. And I believe that Sam Alito will be the type of justice who will listen with an open mind and will not have any agenda-driven or result-oriented approach.

### **Judge Lewis on why he endorses Judge Alito ...**

I am here as a matter of principle and as a matter of my own commitment to justice, to fairness, and my sense that Sam Alito is uniformly qualified in all important respects to serve as a justice on the United States Supreme Court.

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<sup>8</sup> Former Judge Tim Lewis, appointed by President George H.W. Bush in 1992, served on the 3<sup>rd</sup> Circuit for seven years before retiring to enter private practice, where he does significant work in civil rights and human rights law.